

§ 536.305

5 CFR Ch. I (1–13 Edition)

positions and 5 CFR 532.407 for Federal Wage System positions). If the promotion action results in a terminating condition as described in § 536.308 (e.g., the resulting rate is equal to or greater than the existing retained rate), pay retention ceases to apply. Otherwise, the employee's existing retained rate continues.

(4) If the employee is moving to a position under a different covered pay system whose grade has a higher comparison rate, the agency must apply the applicable pay administration rules to determine the employee's payable rate of basic pay (e.g., part 531, subpart B, for GS positions and part 532 for Federal Wage System provisions). If the promotion action results in a terminating condition as described in § 536.308 (e.g., the resulting rate is equal to or greater than the existing retained rate), pay retention ceases to apply. Otherwise, the employee's existing retained rate continues.

(5) In applying this section to a retained rate employee who receives a temporary promotion or temporary reassignment, the temporary promotion or temporary reassignment is not a basis for permanently terminating an employee's pay retention entitlement. When the temporary promotion or temporary reassignment ends, the employee's pay retention entitlement will be determined as if the employee had not received the temporary promotion or temporary reassignment.

(6) Notwithstanding § 536.308(a)(1), an agency must continue a retained rate entitlement for an employee serving under an interim appointment made under 5 CFR 772.102 if the employee's pay was retained under this subpart under the appointment immediately preceding the interim appointment.

[70 FR 31310, May 31, 2005, as amended at 73 FR 66156, Nov. 7, 2008]

§ 536.305 Adjusting an employee's retained rate when a pay schedule is adjusted.

(a)(1) Except as otherwise provided in this section, when the maximum rate of the highest applicable rate range for an employee's position of record is increased while the employee is receiving a retained rate, the employee is entitled to 50 percent of the amount of the

increase in that maximum rate, subject to the maximum rate limitation in § 536.306. This 50-percent adjustment rule applies only when the maximum rate increases are attributable to the adjustment of the employee's existing pay schedule or the establishment of a new pay schedule that covers the employee's existing position of record.

(2) As provided in 5 CFR 531.206, a retained rate adjustment under paragraph (a)(1) of this section is a general pay adjustment that must be applied before any geographic conversion under § 536.303(b) or any other simultaneous pay action. The retained rate adjustment under paragraph (a)(1) of this section must be determined based on the employee's position of record and official worksite as in effect immediately before the effective date of the adjustment.

(3) Consistent with 5 U.S.C. 5363(c), a change in the maximum rate of the highest applicable rate range based on a change in the employee's official worksite is not considered in applying paragraph (a)(1) of this section. The employee's new retained rate must be determined under the geographic conversion rule in § 536.303(b).

(4) Paragraph (a)(1) of this section does not apply to an increase in an employee's highest applicable rate range that results from a change in the employee's position of record. Such an increase is not attributable to an adjustment in the pay schedule applicable to the employee's position and thus is not an increase as described in 5 U.S.C. 5363(b)(2)(B).

(b) When a pay schedule adjustment causes an employee's retained rate (after any adjustment under this section) to become equal to or lower than the maximum rate of the highest applicable rate range for the grade of the employee's position, the employee is entitled to the maximum rate of the highest applicable rate range, and pay retention ceases to apply.

§ 536.306 Limitation on retained rates.

(a) A retained rate may not at any time exceed the rate payable for level IV of the Executive Schedule.

(b) When an employee's retained rate is limited under this section, an agency

may not apply this subpart or the provisions of any other law or regulation to the rate of basic pay the employee would have received but for this limitation.

§ 536.307 Treatment of a retained rate as basic pay for other purposes.

(a) A retained rate is considered to be an employee's rate of basic pay for the purpose of computing or applying—

(1) Retirement deductions, contributions, and benefits under 5 U.S.C. chapters 83 and 84;

(2) Life insurance premiums and benefits under 5 U.S.C. chapter 87;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V, and 5 CFR part 532 and part 550, subparts A and I;

(4) Severance pay under 5 U.S.C. 5595 and 5 CFR part 550, subpart G;

(5) Post differentials under 5 U.S.C. 5925 and danger pay allowances under 5 U.S.C. 5928;

(6) Nonforeign area cost-of-living allowances and post differentials under 5 U.S.C. 5941(a) and 5 CFR part 591, subpart B;

(7) Lump-sum payments for accumulated and annual leave under 5 CFR part 550, subpart L;

(8) General Schedule pay administration provisions (e.g., promotion increases) to the extent provided in 5 CFR part 531, subpart B;

(9) Pay administration provisions for prevailing rate employees to the extent provided in 5 CFR part 532;

(10) Adverse action provisions in 5 CFR part 752;

(11) Other provisions as specified in other statutes or regulations; and

(12) Payments and benefits equivalent to those listed in this section under other legal authorities, as determined by the head of the agency or other authorized official responsible for administering such payments or benefits.

(b) For the purpose of applying other laws and regulations not listed in paragraph (a) of this section to an employee receiving a retained rate, the employee's rate of basic pay is deemed to be the applicable maximum rate of basic pay for the employee's position of record (e.g., the maximum rate of basic pay for a locality rate range or special rate range, as applicable, for the pur-

pose of computing a percentage-based award under 5 CFR 451.104(g)).

[70 FR 31310, May 31, 2005, as amended at 73 FR 66156, Nov. 7, 2008]

§ 536.308 Loss of eligibility for or termination of pay retention.

(a) Eligibility for pay retention ceases if any of the following conditions occurs at any time after the employee has received written notification that the employee's pay will be reduced, and entitlement to pay retention terminates if any of the following conditions occurs after the commencement of pay retention:

(1) The employee has a break in service of 1 workday or more;

(2) The employee is entitled to a rate of basic pay under a covered pay system which is equal to or greater than the employee's retained rate (after applying any applicable geographic conversion under paragraph (b) of this section), except that entitlement to a retained rate will not be terminated based on entitlement to an equal or higher rate of basic pay during a temporary promotion or temporary reassignment but will be held in abeyance during that temporary period.

(3) The employee declines a reasonable offer (as determined under § 536.104) of a position in which the employee's rate of basic pay would be equal to or greater than the employee's retained rate (after applying any applicable geographic conversion under paragraph (b) of this section);

(4) The employee is reduced in grade for personal cause or at the employee's request (based on the actual grade of the employee's position rather than the employee's retained grade and, when a movement to a different covered pay system is involved, a comparison of comparison rates under § 536.105); or

(5) The employee moves to a position not under a covered pay system.

(b) When the rate comparison required by paragraph (a)(2) or (3) of this section involves a new or offered position that is located in a different geographic area where different pay schedules would apply to the employee's existing position of record, the agency must convert the employee's existing